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**Lifeforce and Local 881, United Food and Commercial Workers.** Cases 13–CA–091617 and 13–RC–074795

December 16, 2014

DECISION, CERTIFICATION OF  
REPRESENTATIVE, AND NOTICE TO  
SHOW CAUSE

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA  
AND SCHIFFER

On December 21, 2012, the National Labor Relations Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 45 (2012). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Seventh Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has consolidated the underlying representation proceeding with this unfair labor practice proceeding and delegated its authority in both proceedings to a three-member panel.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's December 21, 2012 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, also occurred at a time when the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm, and we do not give it preclusive effect. Accordingly, we consider below the representation issues that the Respondent has raised in this proceeding.

In its response to the Notice to Show Cause, the Respondent reiterates its objections to the election alleging that the Board agent conducting the election "failed to

maintain the integrity of the voting area" by (1) permitting the election observers to leave the voting area without securing the ballot box; (2) leaving the voting place without securing the ballots; and (3) permitting voters to view the *Excelsior* list.<sup>1</sup>

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the Respondent's objections to the election held on March 30, 2012, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 11 for and 9 against the Petitioner; there was 1 void ballot. The Board has reviewed the record in light of the exceptions and brief. We agree with the findings of the Regional Director that the Respondent has failed to present evidence that would support overturning the election; we adopt his conclusions and recommendations and find that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 881, United Food and Commercial Workers, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

NOTICE TO SHOW CAUSE

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before December 26, 2014, to conform with the current state of the evidence.

2. The Respondent's answer to the amended complaint is due on or before January 9, 2015.

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<sup>1</sup> *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966).

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before January 30, 2015 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's Motion for Summary Judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. December 16, 2014

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

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Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD